IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3799 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHA JASHUBHA VALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3799 of 1989

MRS MC THAKKER for Petitioner No. 1

MR LR PUJARI AGP for Respondents No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/01/2002

ORAL JUDGEMENT

The petitioner, who was working as P.S.I. has

challenged in this petition the impugned order at Annexure-B dated 16.4.1988 passed by the Deputy Inspector General of Police, Saurashtra North Division, Rajkot-respondent No.2, compulsorily retiring him from service with effect from 1.5.1988 on completing 55 years age on 9.3.1988. The challenge was made after the period of one year by way of this petition. That gross delay of one year remained totally unexplained.

However, learned counsel Shri Popat for the petitioner tried to explain the delay of one year by submitting that impugned order passed on 16.4.1988 and the order of provisional pension at Annexure-C was passed on 11.7.1988. He further submitted that without finance, the petitioner was not in a position to file the petition, therefore, delay has occurred. He submitted that when this court has admitted the petition and when this petition is pending before this court since last 12 years, then it would not be proper to dismiss this petition only on the ground of delay. However, it was vehemently submitted by Mr.Pujara that mere pendency of this petition for 12 years itself would not be a ground for entertaining the petition on merits when the petitioner failed to explain the delay of one year. He submitted that even assuming for the sake of argument that he was having financial difficulty, then also, after the order of provisional pension passed in July, 1988, he should not have waited for at least nine more months in filing the petition. The delay of nine months is fatal. He submitted that the petitioner was fully convinced with the compulsorily retiring order on completing 55 years in the year 1988 and, therefore, he accepted even the order of provisional pension passed in July, 1988, but later on he decided to challenge the impugned order of compulsory retirement which does not cast any stigma.

Having heard learned counsel for the parties, I am fully convinced that in the instant case the petitioner has come late before this court. There is a delay of about one year in challenging the impugned order of compulsory retirement. It is difficult to believe that the petitioner was having financial difficulty because he was made to retire as P.S.I. Even assuming for the sake of argument that he had some financial difficulty then also after passing the order of provisional pension at Annexure-C in July, 1988, he should have approached the court immediately. There is lot of substance in the second submission made by Mr.Pujari that the petitioner had already accepted the order of compulsory retirement and also accepted the order of provisional pension, therefore, after a period

of one year he should not be allowed to challenge the impugned order of compulsory retirement.

In view of the above discussion, this petition is dismissed only on the ground of delay and latches without going into the merits of the case.

Before parting I must state that when the impugned orders are passed by the State Government compulsorily retiring the person from service then the State Government should have tried to support by way of filing brief affidavits on merits. It is a different matter in this case that I am not inclined to go into the merits of the matter but in future the State Government should be more careful in supporting such orders by way of filing proper affidavits. With these observations and directions, this petition is dismissed. Rule discharged. No order as to costs.

(B.J.Shethna, J.)

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